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NOTES.

RAILROAD COMPANY'S LIABILITY FOR GOODS LEFT IN THE CHECK ROOM.

The American courts, it seems, have not yet had presented to them the question of the nature of a carrier's liability for the failure to safely keep articles left in its check room. This question has, however, repeatedly come before the English courts, where the main issue seems to have been whether—granting that the carrier had a duty of safe keeping—could the liability for a failure to perform this duty be limited by conditions printed upon the check handed out as a receipt for the goods?

A recent Scotch case, *Lyons* v. *Caledonian Ry. Co.*, 1909 Sessions Cases 1185, serves to illustrate the conclusions arrived at by the English courts.[1] It was there held that the goods

[1] *Harris* v. *Great Western R. R.*, 45 L. J. C. P. N. S. 729; *Van Toll*

were deposited subject to the conditions printed on the ticket given to the depositor upon the receipt of the goods, and that since the conditions, in this case, were not fulfilled by the person so depositing, the railroad company was not liable for the loss. This decision was reached in spite of the fact that the condition provided that there should be no liability whatever unless a certain requirement was met, and although the loss resulted from apparent negligence on the part of the defendant, the carrier, for the goods were stolen from the company's platform where they had been left, instead of being deposited in the cloak room. The decision is, however, supported by the direct authority of a leading English case,[2] which reached the same result on almost identical facts.

In coming to their conclusion the English courts go upon the theory that the carrier and the depositor enter into a contract by which the carrier's liability is limited, and, as a result, a very important question is raised as to what degree of knowledge the depositor must have of the conditions printed on the ticket to be bound thereby. In the leading case [3] the condition was printed on the back of the ticket with a notice calling attention to it, on the face. The depositor read the notice, but did not read the condition and yet was held bound thereby. Said the Court: "The plaintiff knew the goods were received on condition and he must, therefore, be held to have accepted the conditions and it is of no consequence that he did not read them. By accepting the ticket without objection and thereupon depositing the goods he represented to the company that he agreed to the conditions and so induced them to enter into the contract. He is thus precluded from disputing the conditions upon which the railway company relied."

So, also, even where the plaintiff, in the trial, was not asked whether or not she had seen the notice on the back of the ticket, whereby the company's liability was limited, the company was not held liable for the loss of such deposited goods.[4] The Court here proceeded on the ground that the company had received the deposit, not as carriers to forward, but as ordinary bailees upon the terms contained in the printed notices, which terms being within the plaintiff's means of ascertaining them, the plaintiff must be taken to be bound thereby. Willes, J., said:

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v. *South Eastern R. R.*, 12 C. B. N. S. 75; *Parker* v. *South Eastern R. R.*, 46 L. J. C. P. N. S. 768; *Pratt* v. *South Eastern R. R.*, 66 L. J. Q. B. N. S. 418.

[2] *Harris* v. *Great Western R. R.*, 45 L. J. C. P. N. S. 729.

[3] *Lyons* v. *Caledonian Ry Co.*, 1909 Sessions Cases 1185.

[4] *Van Toll* v. *R. R.*, 12 C. B. N. S. 75.

"Assuming that the plaintiff did not read the terms of the condition, it is evident that she knew they were there and that she was satisfied to leave the goods in the hands of the company upon those terms. The obvious result is that either she must be taken to have assented to the terms, or if she did not assent she knew they were terms which the railway company intended to stipulate for." In a later case[5] Mellish, J., said: "If in the course of making a contract a party delivers a paper to another containing writing and the party receiving the paper knows that the paper contains conditions which the party delivering it intends to constitute the contract, I have no doubt that the party receiving the paper does, by receiving and keeping it, assent to the conditions contained in the paper, although he does not read them and does not know what they are. On the other hand, if the person receiving the ticket does not know there is any writing at all upon the back of the ticket, he is not bound by a condition printed on the back." If the third alternative be true that the plaintiff knew there was writing on the ticket, but did not know that the writing contained conditions, nevertheless, he would be bound, in the opinion of Mellish, "if the delivering the ticket to him in such a manner that he could see there was writing upon it, was, in the opinion of the jury, reasonable notice that the writing contained conditions."

In view of these English decisions, it may be interesting to note the attitude of American courts upon the question of knowledge of conditions which are printed upon baggage tickets, and which limit the carrier's liability. As a preliminary proposition it should be noted that in the case of a shipper of merchandise making a delivery to a railroad company there is a presumption upon receipt of the bill of lading or other receipt, in the absence of proof of any unfair means having been resorted to by the carrier to keep him from understanding its terms, that the shipper assented to the lawful limitations included in the bill of lading or receipt.[6] By acceptance of the receipt the plaintiff estops himself from saying that a contract has not been made between himself and the carrier according to the terms of the receipt,[7] and if he fails to read it he does so at his peril.[8]

The ordinary baggage check, however, is of a different nature,

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[5] *Parker* v. *R. R.*, 46 L. J. C. P. N. S. 768.

[6] *Hutchinson on Carriers*, §409.

[7] *Belger* v. *Dinsmore*, 51 N. Y. 166; *Kirkland* v. *Dinsmore*, 62 N. Y. 71.

[8] *Belger* v. *Dinsmore*, 51 N. Y. 166; *McMillan* v. *Ry. Co.*, 16 Mich. 112.

being a mere token given by the carrier as evidence that he has received the carrier's baggage, and does not, in itself, import a contract. Hence, no presumption will arise from any limitations which are written upon a baggage check, that they were known to the passenger and assented to by him, when the check was delivered to him.[9] To constitute limitations of the carrier's liability the conditions must be shown to have been called to the passenger's attention, or, at least, the circumstances must be shown to have been such that the passenger knew of the conditions when he accepted the check.[10] Thus it was held, that, where a carrier delivered to a passenger a baggage check which had a notice on the back thereof limiting its liability, and which on its face had the words "look on back," there was no presumption of law that the passenger had read the notice.[11]

Where the conditions on a card given as a receipt for baggage were printed in small letters, while the other matter appeared in large and attractive print, it was held "at least equivocal in its character" and the plaintiff was not presumed to know its contents or to assent to them.[12] As was said by the New York Court:[13] "Where a traveler, on delivery of baggage to a local express company receives a paper which from the circumstances of the transaction, he has a right to regard simply as a receipt or voucher to enable him to follow and identify his property, and no notice is given to him that it embodies the terms of a special contract or is intended to subserve any other purpose than as a voucher, his omission to read the paper is not *per se* negligence and he is not as a matter of law bound by its terms." Whether, in a particular case, the party receiving such a receipt accepted it with notice of its contents, or with notice that it contained the terms of a special contract, so as to require him to acquaint himself with the contents, is a question for the jury.[14]

S. D. C.

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[9] *Hutchinson on Carriers*, §1298; 6 *Cyclopedia Law and Procedure*, p. 664.

[10] *R. R. Co.* v. *Cox*, 29 Ind. 360; *Malone* v. *R. R. Co.*, 12 Gray 388; *Blossom* v. *Dodd*, 63 Hun. 324; *Maden* v. *Sherrard*, 73 N. Y. 329; *Woodruff* v. *Sherrard*, 9 Hun. 322.

[11] *Malone* v. *R. R.*, 12 Gray 388.

[12] *Blossom* v. *Dodd*, 43 N. Y. 264.

[13] *Gossman* v. *Dodd*, 63 Hun. 324.

[14] *Maden* v. *Sherrard*, 73 N. Y. 329.